

STATE OF MICHIGAN
COURT OF APPEALS

MARK GOSS,

Plaintiff-Appellee,

v

MICHIGAN DEPARTMENT OF
NATURAL RESOURCES,

Defendant-Appellant.

UNPUBLISHED

July 23, 2020

No. 349411

Court of Claims

LC No. 19-000022-MZ

Before: FORT HOOD, P.J., and JANSEN and TUKEL, JJ.

PER CURIAM.

In this third-party no-fault action, defendant, the Department of Natural Resources (DNR), appeals as of right the Court of Claims’ order denying its motion for summary disposition on the basis of governmental immunity. The only issue on appeal is whether the DNR-owned vehicle involved in the accident meets the definition of “motor vehicle” for purposes of the motor-vehicle exception to governmental immunity provided by MCL 691.1405. For the reasons discussed below, we affirm.

I. FACTUAL BACKGROUND

On February 26, 2018, DNR Ranger Roy Pederson was driving a utility vehicle pulling a grooming rake to groom the Algonquin Ski Trail in the Upper Peninsula. When Pederson crossed a snowmobile trail, his vehicle collided with a snowmobile driven by plaintiff. Pederson’s vehicle caught fire, and ultimately there was an explosion. Plaintiff was severely injured and Ranger Pederson died in the accident.

The vehicle Ranger Pederson drove was a 2015 John Deere Gator 625i model crossover utility vehicle. The parties apparently agree that the Gator is properly characterized as an off-road vehicle (ORV). Gators are standard-equipped with all-terrain tires, but those tires, for snow traction, can be removed and replaced with a track system that resembles the treads on a tank. The Gator at issue in this case had such a track system installed. The court described the vehicle as weighing 1,440 pounds, and having a 23-horsepower, 617 cubic-centimeter gasoline-powered engine, along with bucket seats, seatbelts, front and rear disc brakes, four-wheel drive, cup holders,

a speedometer, a tachometer, a cargo bed, a windshield, a roof, mirrors, tail lights, brake lights, doors, windows, front and rear bumpers, and a towing hitch. Pederson used the towing hitch to tow a rake used to groom ski trails.

Plaintiff commenced his action in the Court of Claims seeking damages on a respondeat superior theory, asserting that defendant was vicariously liable for the alleged negligence or gross negligence of its employee, Ranger Pederson. In lieu of an answer, defendant filed a motion for summary disposition, arguing that it was entitled to governmental immunity, and that the Gator was not a motor vehicle for purposes of the motor-vehicle exception to immunity under MCL 691.1405. Plaintiff countered that the Gator resembled, and was equipped similarly to, a car or truck, and so qualified as a motor vehicle entitling him to avoid governmental immunity.

The Court of Claims analyzed caselaw discussing a variety of machinery that appellate courts have held did, or did not, satisfy MCL 691.1405's specification of "motor vehicle" for purposes of the exception to governmental immunity. The court concluded that the Gator more closely resembled an automobile or truck than it did such equipment that courts have held did not come under the motor-vehicle exception as forklifts and golf carts. The court further reasoned that the Gator's "intended and actual use" made it more similar to machinery that had been held to meet the definition of "motor vehicle" than to equipment that did not. Accordingly, the court ruled that the Gator was a "motor vehicle" for purposes of depriving defendant of immunity under MCL 691.1405 and denied defendant's motion for summary disposition. This appeal followed.

II. STANDARD OF REVIEW

A trial court's decision on a motion for summary disposition and on issues of statutory interpretation are reviewed de novo. *McCahan v Brennan*, 492 Mich 730, 735-736; 822 NW2d 747 (2012). Specifically, "the applicability of governmental immunity is a question of law that this Court reviews de novo." *Woods v Detroit*, 323 Mich App 416, 419; 917 NW2d 709 (2018) (quotation marks and citation omitted).

III. ANALYSIS

Under the Governmental Tort Liability Act, MCL 691.1401 *et seq.*, governmental agencies in this state are generally immune from tort liability for actions taken in furtherance of governmental functions. MCL 691.1407(1). "It is well established that governmental immunity is not an affirmative defense, but is instead a characteristic of government." *Fairley v Dep't of Corrections*, 497 Mich 290, 298; 871 NW2d 129 (2015), citing *Mack v Detroit*, 467 Mich 186, 198; 649 NW2d 47 (2002). It is a plaintiff's burden to plead and prove facts establishing an exception to governmental immunity. *Fairley*, 497 Mich at 300; *Mack*, 467 Mich at 198. "The Legislature has provided six exceptions to this broad grant of immunity, which courts must narrowly construe." *Yono v Dep't of Transp*, 499 Mich 636, 646; 885 NW2d 445 (2016) (quotation marks and citation omitted). One such statutory exception is the so-called motor-vehicle exception, which provides that governmental agencies remain "liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner." MCL 691.1405.

As our Supreme Court has noted, the statute does not define “motor vehicle.” *Stanton v Battle Creek*, 466 Mich 611, 616; 647 NW2d 508 (2002). Although the statute refers to the Motor Vehicle Code, MCL 257.1 *et seq.*, for the definition of “owner,” it does not do so for the term “motor vehicle.” *Id.* Upon consulting two dictionary definitions, and reasoning that the rule requiring narrow construction of statutory exceptions to immunity also required it to “apply a narrow definition to the undefined term ‘motor vehicle,’” our Supreme Court held that “motor vehicle” for purposes of the motor-vehicle exception is “an automobile, truck, bus, or similar motor-driven conveyance.” *Id.* at 618. The Court concluded that a forklift does not meet the definition of “motor vehicle” because it is a piece of industrial equipment not similar to a car, truck, or bus. *Id.*

The Court expanded that analysis in its order in *Overall v Howard*, 480 Mich 896; 738 NW2d 760 (2007), in which it reversed this Court’s opinion, *Overall v Howard*, unpublished opinion per curiam of the Court of Appeals, issued April 26, 2007 (Docket No. 274588), holding that a golf cart met the definition of “motor vehicle,” and expressly adopted the reasoning of Judge JANSEN’s partial dissent.¹ Judge JANSEN expanded upon *Stanton*’s “similar motor-driven conveyance” analysis by considering also whether the conveyances at issue were designed for operation on or along the roadway:

[T]he vehicles at issue in [other cases applying MCL 691.1405] were motor-vehicle-like conveyances that were designed for operation on or alongside the roadway, and each of these conveyances generally resembled an automobile or truck. In contrast, the forklift at issue in *Stanton* was not similar to an automobile, bus, or truck, and was not designed for operation on or alongside the roadway. [*Overall*, unpub op at 1 (JANSEN, J., concurring in part and dissenting in part).]

This Court has held that machinery such as a “Gradall excavator,” *Wesche v Mecosta Co Rd Comm*, 267 Mich App 274, 278; 705 NW2d 136 (2005) *aff’d* 480 Mich 75 (2008), a “broom tractor” and a “tractor mower” performing roadside maintenance, *Regan v Washtenaw Co Rd Comm’s (On Remand)*, 257 Mich App 39; 667 NW2d 57 (2003), and a tractor pulling a hay wagon with passengers for hayrides, *Yoches v Dearborn*, 320 Mich App 461, 474; 904 NW2d 887 (2017), were all “motor vehicles” for purposes of MCL 691.1405. In the latter case, this Court rejected the municipal defendant’s argument that tractors and hay wagons were typically found on farms and not roadways, emphasizing that “binding caselaw is quite clear that the ‘primary function’ of a vehicle does not control the analysis.” *Yoches*, 320 Mich App at 474. This Court also noted that “the tractor and hay wagon were being used to carry numerous passengers on a roadway used by campers and patrolled by law enforcement, which, unlike equipment such as a forklift, renders the tractor and hay wagon ‘invariably connected’ to the roadway itself.” *Id.*, quoting *Wesche*, 267 Mich App at 278, quoting *Regan*, 257 Mich App at 48.

¹ Supreme Court orders are binding precedent “to the extent they can theoretically be understood, even if doing so requires one to seek out other opinions” *Woodring v Phoenix Ins Co*, 325 Mich App 108, 115; 923 NW2d 607 (2018).

The question here is whether the Gator is more like a tractor or an excavator, which would make it a “motor vehicle” triggering the exception as in *Wesche*, *Regan*, and *Yoches*, or whether it is more like a golf cart or forklift as in *Stanton* and *Overall*.

Defendant emphasizes the nature of the Gator as an ORV and insists that the manufacturer did not intend for it to be used on a roadway, and that the Secretary of State has classified such vehicles as not intended for roadway use. But leaving aside that a conveyance’s primary intended purpose does not control the analysis, the Gator’s status as a vehicle intended for off-road use does not, in and of itself, exclude it from the motor-vehicle exception. “Motor vehicle,” as judicially defined for that purpose, contemplates vehicles used either on *or* alongside the road.

Defendant’s repeated insistence that the Gator is not designed for use on the roadway overlooks that, “alongside the roadway” could necessarily include “off road.” An ORV, therefore, is a conveyance that might reasonably be expected to operate “alongside the roadway,” as would a tractor mower cutting grass. A Gator closely resembles a car or truck and contains equipment such as seat belts and brake lights that comport with operation on a roadway. And, as plaintiff’s expert testified by affidavit, in the area of the Upper Peninsula where the accident occurred, county ordinances have been enacted allowing ORVs to operate on county roadways under certain conditions. Thus, regardless of the manufacturer’s recommendation, or the Secretary of State’s classification, the Gator is a vehicle one might expect to find on, or at least alongside, a roadway. It is not mere equipment like a forklift, and it is far more robust with more motor-vehicle-like features than a golf cart.

For these reasons, we conclude that the Court of Claims properly held that the subject Gator was a “motor vehicle” for purposes of MCL 691.1405, and thus properly denied defendant’s motion for summary disposition predicated on governmental immunity.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Kathleen Jansen
/s/ Jonathan Tukel